IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 10.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.737 of 2006

Rajeswari ... Petitioner

Vs.

1.The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Greater Chennai,
Chennai-600 008. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records, set aside the detention order passed by the second respondent in BDFGISV No.171/2006 dated 03.07.2006 and direct the second respondent to produce the body of the petitioner's husband viz., Soori, S/o Shanmugam, now confined in Central Prison, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Abudukumar Rajarathinam for
Mrs.N.Bhuvaneswari

For Respondents: Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the wife of the detenu, by name Soori, who is detained as a ''Goonda" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 03.07.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner has submitted that the detention order is liable to be quashed on the ground of non application of mind on the part of the detaining authority. In support of the above contention, the learned counsel for the petitioner has brought to our notice paragraph 3 of the grounds of detention wherein the detaining authority while considering the pre-detention representation dated 20.06.2006, which was sent by Tmt.Rajeswari, wife of the detenu and in the later part of the same paragraph, proceeded as if the said representation was made by the detenu's mother. As pointed out, when the representation was made by Rajeswari, who is none else than the wife of the detenu Soori, the detention order proceeds as if that the said representation was made by the mother of the detenu which shows that the detaining authority has not applied her mind.

4. It is also brought to our notice that even though the detaining authority has referred to and relied on the pre-detention representation dated 20.06.2006, no rejection letter was sent to the detenu or the person, who made such representation. In the subsequent reply dated 18.08.2006 sent to the wife of the detenu with reference to the representation dated 28.07.2006, the Government itself admitted that the pre-detention representation is dated 20.06.2006 (wrongly mentioned as 26.06.2006). In such circumstances, it is but proper on the part of the authority concerned to consider the representation effectively and communicate the same to the person concerned. Failure to do so vitiates the detention order. We accept the contention raised by the learned counsel for the petitioner.

5. The learned counsel for the petitioner, by drawing our attention to the remand order, which is available at page 143 of the paper book supplied to the detenu, has contended that the English version of the said document and the translated copy of the remand

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order, which is available at page 147, made the detenu confused because of the reference made to two different Courts viz., Judicial Magistrate, Alandur and V Metropolitan Magistrate, Egmore, Chennai, which prevented him in making effective representation. We have verified both the documents available at pages 143 and 144 of the paper book supplied to the detenu. Though the learned Additional Public Prosecutor has submitted that the accused surrendered before the V Metropolitan Magistrate, Egmore, Chennai, and the same learned Magistrate remanded him till 13.06.2006, as rightly pointed out by the learned counsel for the petitioner, a reading of the said order undoubtedly would confuse the mind of the detenu. There is no clarification or explanation by any one either in the detention order or in the subsequent reply by the Government. We also accept the above contention.

6. The learned counsel for the petitioner, by taking us through pages 70 to 74 of the booklet supplied to the detenu, has contended that all the pages are not legible. He also contended that inspite of the specific representation to the Government, though the Government assured that clear copies would be supplied, according to him, all the copies were not supplied to the detenu. We have verified the relevant pages. As rightly pointed out by the learned counsel for the petitioner, some of the pages are not legible and readable. Even after the direction of the Government, as rightly pointed out, the copies supplied to the detenu are not legible. As pointed out, it is not an empty formality, particularly, when a request was made on the ground that the copies supplied are not legible. In a matter like this, when the Government assured by way of reply that legible copies would be supplied, it is but proper to supply the copy of the entire order and the same must be legible and readable. We accept the said contention also.

7. The learned counsel for the petitioner, by drawing our attention to the special report of the sponsoring authority dated 27.06.2006, has submitted that some of the information, particularly, in para 5 cannot be true. While elaborating the above contention, he pointed out that the said report is dated 27.06.2006. However in para 5, the sponsoring authority has stated that the accused persons filed Crl.M.P.No.7167 of 2006 on 22.06.2006 before the District and Sessions Court, Chenglepet and on the orders of the Court, the same was adjourned to 04.07.2006 and thereafter to 28.08.2006. It is not clear as to how the sponsoring authority was able to ascertain the adjourned date viz., 28.08.2006 even on 27.06.2006. In such circumstances, as rightly pointed out by the learned counsel for the petitioner, it is but proper on the part of the detaining authority to get it clarified. In the absence of the same, it is presumed that the detaining authority has not applied her mind nor concentrated on the details furnished by the sponsoring authority.

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8. In similar circumstance, a Division Bench of this Court, while considering the unexplained discrepancies found in the special report, has quashed the detention order on the ground of non application of mind on the part of the detaining authority viz., 2000 (2) Law Weekly (Criminal) 543 (KARTHIK VS. THE COMMISSIONER OF POLICE, TIRUCHIRAPALLI CITY, TIRUCHIRAPALLI AND ANOTHER). In view of the discrepancies as pointed out by us in the special report and in the absence of any clarification by the detaining authority, we are in agreement with the view expressed by the Division Bench. Accordingly, the detention order is liable to be quashed on this ground also.

9. Finally, the learned counsel for the petitioner has submitted that inasmuch as the detention order against two co-detenus, who are alleged to have involved in the ground case, was revoked by the Government on the opinion of the Advisory Board, the present detention in respect of the co detenu by name Soori is also liable to be quashed. He highlighted the common features and also relied on the earlier decision of this Court dated 14.09.2004 rendered in HCP No.484 of 2004, wherein the Division Bench, after considering the issue raised, in depth, with reference to the opinion of the Advisory Board under Section 12(1) and the orders of the Government, has accepted the said contention and quashed the detention order. The following conclusion in para 23 is as follows:

> "..... Where, however, the ground case is the same in respect of several detenues, how the case of a co-detenue is considered subsequently, by the Advisory Board or even the Court, is a relevant circumstance, which the State Government is required to consider at the subsequent stage of confirmation. This is not to suggest that in every case where the Advisory Board opines regarding the release of a co-detenue detained on the basis of the same ground case, all the co-detenues are to be released irrespective of other circumstances. We are stressing upon the fact that such a release is a relevant factor, which should be considered by the State Government and non-consideration of such relevant factor would vitiate the order of confirmation."

10. We are in respectful agreement with the said view. As pointed out above, the learned counsel for the petitioner took pains in taking us through the factual details and allegations made against the other co-detenus as well as the detenu in this petition. We are satisfied that the detenu in this case also stands on the same footing. In such circumstances, as observed by the Division Bench, the release of other co-detenus is a relevant factor to be considered by the Government and failure to do so would vitiate the order of confirmation.

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11. In the light of what is stated above, the impugned order of detention is liable to be quashed and accordingly, the same is quashed. The Habeas Corpus Petition is allowed . The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2. The Commissioner of Police, Greater Chennai, Chennai-600 008.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. P. Murugesan, Advocate SR No. 47140

GM(CO)
SR/25.10.2006

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